

Background on Agriculture Issue

Overview...

In 2004, NOAA/EPA provided Oregon with an informal interim approval of its agriculture conditions that the state had satisfied the 1998 condition on its program to develop Agriculture Water Quality Management plans that included the 6217(g) MMs across the coastal nonpoint management area since the ag MMs were in the appendix of every plan. In developing the original 1998 condition, NOAA/EPA appear to have assumed that the AWQMA plans would be enforced by the AWQMA rules. We now understand that is not the case. The AWQMA plans which contain the specific 6217(g) ag MMs are voluntary.

(b)(5) deliberative

Current Questions and Implications for National CZARA Program...

(b)(5) deliberative

(b)(5) deliberative

Potential Decision Options and Considerations...

(b)(5) deliberative

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A More Detailed History...

1998 Condition (public-noticed):

CAFOs: Oregon will include in its program management measures in conformity with the 6217 (g) guidance for facilities where animals are confined for less than four months and that do not have prepared surfaces or waste water control facilities. Also within two years, Oregon will provide a strategy (in accordance with section XII, pages 19-20) for use of the State's water quality law (ORS 468B) as a

back-up enforceable mechanism to ensure implementation of the management measures for confined animal facilities as proposed on pages 48-50 of the State's program submittal.

EROSION and SEDIMENT CONTROL, NUTRIENT, PESTICIDE, GRAZING, and IRRIGATION WATER

MANAGEMENT: Oregon will (1) designate agricultural water quality management areas (AWQMAs) that encompass agricultural lands within the 6217 management area, and (2) complete the wording of the alternative management measure for grazing, consistent with the 6217(g) guidance.

Agricultural water quality management area plans (AWQMAPs) will include management measures in conformity with the 6217(g) guidance, including written plans and equipment calibration as required practices for the nutrient management measure, and a process for identifying practices that will be used to achieve the pesticide management measure. The State will develop a process to incorporate the irrigation water management measure into the overall AWQMAPs. Within five years, AWQMAPs will be in place.

2004 Interim Decision (not public-noticed):

- NOAA and EPA gave OR interim approval for all ag conditions.
- Oregon adopted new CAFO legislation addressing CAFO condition.
- Oregon adopted AWQMA Plans for all basins in CZARA area which included 6217(g) MMs as appendices to plans.
- Although feds conferred interim approval, rationale called out several concerns with ag NPS management in OR:
 - How the state programs link enforcement capability to the management measures needed to meet WQS. (Encouraged state to conduct a thorough sufficiency analysis and revise plans and rules accordingly.)
 - The state's lack of enforcement action when needed. (Encouraged the state to take a more active enforcement role to ensure that the 6217(g) MMs and AWQMA plans are implemented.)
 - The AgWQMP being reactive and not proactive since AgWQMP would be responsive only to those issues identified in a TMDL. (Encouraged a more holistic, pollution prevention approach when revising AWQMA plans.)
- NOAA and EPA also provided OR with an interim approval for the general process for identifying critical coastal areas and additional MMs, when needed, that the state was also initially conditioned on. OR's process relies on Statewide Planning Goal 16 (Estuarine Resources) and its OWEB Watershed Assessment Tool to identify CCAs and its watershed assessment tool and TMDL process to identify add MMs, as needed, within those CCAs. This is on-par with what NOAA and EPA have approved for other states.

2013 Proposed Disapproval Decision:

"Although the federal agencies initially found that these programs enabled the State to satisfy the agriculture condition, there is concern that water quality impairments from agriculture activities within the coastal nonpoint management area are widespread and that the State's programs and policies may not adequately meet the 6217(g) management measures for agriculture to protect coastal waters. For example, NOAA's National Marine Fisheries Services' recent listings for coho salmon and draft recovery plans (both under the Endangered Species Act) find that insufficient riparian buffers around agriculture

activities are one of the contributors to the salmon's decline. Some specific concerns with the State's agriculture program that have been brought to the federal agencies' attention and may influence the final decision of whether the State has satisfied the 6217(g) agriculture management measure requirements and the conditions placed on its program include the following:

- Enforcement is limited and largely complaint-driven; it is unclear what enforcement actions have been taken in the coastal nonpoint management area and what improvements resulted from those actions.
- The AWQMA plan rules are general and do not include specific requirements for implementing the plan recommendations, such as specific buffer requirements to adequately protect water quality and fish habitat.
- AWQMA planning has focused primarily on impaired areas when the focus should be on both protection and restoration.
- The State does not administer a formalized process to track implementation and effectiveness of AWQMA plans.
- AWQMA planning and enforcement does not address "legacy" issues created by agriculture activities that are no longer occurring."

2015 Disapproval Decision:

"The federal agencies appreciate the comments provided and are considering them closely. NOAA and EPA will work with the State, as necessary, to ensure it has programs and policies in place to satisfy all CZARA 6217(g) requirements for agriculture before proposing and making a final decision that the State has a fully approved coastal nonpoint program."